

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Scott Johnson,**

Plaintiff,

v.

**Today's Hotel Corporation,** a  
California Corporation; and Does 1-  
10,

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Defendants Today's Hotel Corporation, a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

1       2. Defendant Today's Hotel Corporation owned the real property located  
2 at or about 1500 Van Ness Avenue, San Francisco, California, in July 2017.

3       3. Defendant Today's Hotel Corporation owned the real property located  
4 at or about 1500 Van Ness Avenue, San Francisco, California, in August 2017.

5       4. Defendant Today's Hotel Corporation owned the real property located  
6 at or about 1500 Van Ness Avenue, San Francisco, California, in September  
7 2017.

8       5. Defendant Today's Hotel Corporation owned the real property located  
9 at or about 1500 Van Ness Avenue, San Francisco, California, in October  
10 2017.

11       6. Defendant Today's Hotel Corporation owned the real property located  
12 at or about 1500 Van Ness Avenue, San Francisco, California, in November  
13 2017.

14       7. Defendant Today's Hotel Corporation owned the real property located  
15 at or about 1500 Van Ness Avenue, San Francisco, California, in December  
16 2017.

17       8. Defendant Today's Hotel Corporation owns the real property located at  
18 or about 1500 Van Ness Avenue, San Francisco, California, currently.

19       9. Defendant Today's Hotel Corporation owned the Holiday Inn located  
20 at or about 1500 Van Ness Avenue, San Francisco, California, in July 2017.

21       10. Defendant Today's Hotel Corporation owned the Holiday Inn located  
22 at or about 1500 Van Ness Avenue, San Francisco, California, in August 2017.

23       11. Defendant Today's Hotel Corporation owned the Holiday Inn located  
24 at or about 1500 Van Ness Avenue, San Francisco, California, in September  
25 2017.

26       12. Defendant Today's Hotel Corporation owned the Holiday Inn located  
27 at or about 1500 Van Ness Avenue, San Francisco, California, in October  
28 2017.

1 13. Defendant Today's Hotel Corporation owned the Holiday Inn located  
2 at or about 1500 Van Ness Avenue, San Francisco, California, in November  
3 2017.

4 14. Defendant Today's Hotel Corporation owned the Holiday Inn located  
5 at or about 1500 Van Ness Avenue, San Francisco, California, in December  
6 2017.

7 15. Defendant Today's Hotel Corporation owns the Holiday Inn Hotel  
8 ("Hotel") located at or about 1500 Van Ness Avenue, San Francisco,  
9 California, currently.

10 16. Plaintiff does not know the true names of Defendants, their business  
11 capacities, their ownership connection to the property and business, or their  
12 relative responsibilities in causing the access violations herein complained of,  
13 and alleges a joint venture and common enterprise by all such Defendants.  
14 Plaintiff is informed and believes that each of the Defendants herein,  
15 including Does 1 through 10, inclusive, is responsible in some capacity for the  
16 events herein alleged, or is a necessary party for obtaining appropriate relief.  
17 Plaintiff will seek leave to amend when the true names, capacities,  
18 connections, and responsibilities of the Defendants and Does 1 through 10,  
19 inclusive, are ascertained.

20  
21 **JURISDICTION & VENUE:**

22 17. The Court has subject matter jurisdiction over the action pursuant to 28  
23 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
24 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

25 18. Pursuant to supplemental jurisdiction, an attendant and related cause  
26 of action, arising from the same nucleus of operative facts and arising out of  
27 the same transactions, is also brought under California's Unruh Civil Rights  
28 Act, which act expressly incorporates the Americans with Disabilities Act.

1 19. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
2 founded on the fact that the real property which is the subject of this action is  
3 located in this district and that Plaintiff's cause of action arose in this district.  
4

5 **FACTUAL ALLEGATIONS:**

6 20. Plaintiff has gone to the Hotel on a number of occasions during the  
7 relevant statutory period, including July 2017, August 2017, September  
8 2017, October 2017, November 2017, and December 2017.

9 21. The Hotel is a facility open to the public, a place of public  
10 accommodation, and a business establishment.

11 22. Guestrooms are one of the facilities, privileges, and advantages offered  
12 by Defendants to patrons of the Hotel.

13 23. Unfortunately, Defendants did not offer persons with disabilities with a  
14 range of options equivalent to other customer. The required accessible rooms  
15 were not dispersed among the various classes of sleeping accommodations  
16 available to patrons, including with respect to the number of beds provided.

17 24. Plaintiff needed two beds—one for himself and for his aide, who assists  
18 him. Unfortunately, none of the guestrooms at the Hotel are accessible to  
19 wheelchair users.

20 25. In November 2017 (on two occasions), plaintiff was placed in a  
21 guestroom with two beds but, because the guestroom was not set up to be  
22 accessible, it was difficult for plaintiff to move around the room. Not  
23 surprisingly, many of the features in the standard guestroom were inaccessible  
24 to plaintiff.

25 26. Additionally, the Hotel's website did not allow customers to book  
26 accessible guestrooms online.

27 27. Currently, Defendants do not offer persons with disabilities with a range  
28 of options equivalent to other customer. The required accessible rooms are not

1 dispersed among the various classes of sleeping accommodations available to  
2 patrons, including with respect to the number of beds provided.

3 28. Currently, the Hotel's website does not allow customers to book  
4 accessible guestrooms online.

5 29. Transaction counters are another one of the facilities, privileges, and  
6 advantages offered by Defendants to patrons of the Hotel.

7 30. On the day of plaintiff's visits, there was no accessible transaction  
8 counter for use by persons with disabilities.

9 31. Although there was a lowered portion of the transaction counter, this  
10 was not used to conduct transactions. The defendants consistently used the  
11 lowered counter to store promotional materials.

12 32. In fact, during one of plaintiff's November 2017 stays, plaintiff was  
13 forced to use the higher transaction counter because of the marketing and  
14 promotional material stored on the lowered counter.

15 33. Currently, there is no accessible transaction counter for use by persons  
16 with disabilities.

17 34. Currently, although there is a lowered portion of the transaction  
18 counter, this is not use to conduct transactions. The defendants consistently  
19 use the lowered counter to store promotional materials.

20 35. Defendants have no policy to keep the area clear on the lowered  
21 transaction counter.

22 36. Plaintiff personally encountered these barriers.

23 37. These inaccessible conditions denied the plaintiff full and equal access  
24 and caused him difficulty and frustration.

25 38. The barriers existed during each of Plaintiff's visits in 2017.

26 39. The plaintiff frequents the San Francisco area and has visited there on  
27 many occasions in 2017. He went inside the Hotel in July 2017, August 2017,  
28 September 2017 (two times), October 2017 (two times), November 2017

1 (three times) and December 2017 and personally encountered. He visited the  
2 Hotel on one occasion but was deterred from going inside.

3 40. Plaintiff visited the Hotel once in July 2017.

4 41. Plaintiff visited the Hotel once in August 2017.

5 42. Plaintiff visited the Hotel two times in September 2017.

6 43. Plaintiff visited the Hotel two times in October 2017.

7 44. Plaintiff visited the Hotel three times in November 2017.

8 45. Plaintiff visited the Hotel two times in December 2017.

9 46. Plaintiff would like to return and patronize the Hotel but will be deterred  
10 from visiting until the defendants cure the violations.

11 47. The defendants have failed to maintain in working and useable  
12 conditions those features required to provide ready access to persons with  
13 disabilities.

14 48. The violations identified above are easily removed without much  
15 difficulty or expense. They are the types of barriers identified by the  
16 Department of Justice as presumably readily achievable to remove and, in fact,  
17 these barriers are readily achievable to remove. Moreover, there are numerous  
18 alternative accommodations that could be made to provide a greater level of  
19 access if complete removal were not achievable.

20 49. Defendants could also easily place a second bed in an accessible room.

21 50. Plaintiff is and has been deterred from returning and patronizing the  
22 Hotel because of his knowledge of the illegal barriers that exist. Plaintiff will,  
23 nonetheless, return to the business to assess ongoing compliance with the  
24 ADA and will return to patronize the Hotel as a customer once the barriers are  
25 removed.

26 51. Given the obvious and blatant violation, the plaintiff alleges, on  
27 information and belief, that there are other violations and barriers on the site  
28 that relate to his disability. Plaintiff will amend the Complaint to provide

proper notice regarding the scope of this lawsuit once he conducts a site inspection. However, please be on notice that the plaintiff seeks to have all barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to her disability removed regardless of whether he personally encountered them).

52. Additionally, on information and belief, the plaintiff alleges that the failure to remove these barriers was intentional because: (1) these particular barriers are intuitive and obvious; (2) the defendants exercised control and dominion over the conditions at this location and, therefore, the lack of accessible facilities was not an “accident” because, had the defendants intended any other configuration, they had the means and ability to make the change.

**I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

53. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

54. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or

1 accommodations to individuals with disabilities, unless the  
2 accommodation would work a fundamental alteration of those  
3 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

4 b. A failure to remove architectural barriers where such removal is  
5 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
6 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,  
7 Appendix “D.”

8 c. A failure to make alterations in such a manner that, to the  
9 maximum extent feasible, the altered portions of the facility are  
10 readily accessible to and usable by individuals with disabilities,  
11 including individuals who use wheelchairs or to ensure that, to the  
12 maximum extent feasible, the path of travel to the altered area and  
13 the bathrooms, telephones, and drinking fountains serving the  
14 altered area, are readily accessible to and usable by individuals  
15 with disabilities. 42 U.S.C. § 12183(a)(2).

16 55. Under the ADA, a hotel must provide persons with disabilities a range of  
17 options equivalent to those available to other persons served by the facility.  
18 Sleeping rooms and suites required to be accessible must be dispersed among  
19 the various classes of sleeping accommodations available to patrons of the  
20 hotel and this takes into account the number of beds provided. See 1991  
21 Standards § 9.1.4.

22 56. Here, the failure to provide a range of options equivalent to those  
23 available to other persons served by the facility is discriminatory and a  
24 violation.

25 57. Under the ADA, public accommodations that own or operate a place of  
26 lodging have an obligation to “ensure that individuals with disabilities can  
27 make reservations for accessible guest rooms during the same hours and in the  
28 same manner as individuals who do not need accessible rooms.” 28 C.F.R. §



1 36.302(e)(1)(i).

2 58. Here, the Hotel's failure to provide disabled individuals the ability to  
3 book accessible guestrooms online through their website, like non-disabled  
4 individuals, is a violation ADA.

5 59. In areas used for transactions where counters have cash registers and  
6 are provided for sales or distribution of goods or services to the public, at least  
7 one of each type shall have a portion of the counter which is at least 36 inches  
8 in length with a maximum height of 36 inches above the floor. 1991 Standards  
9 § 7.2(1). Under the 2010 Standards, where the approach to the sales or service  
10 counter is a parallel approach, such as in this case, there must be a portion of  
11 the sales counter that is no higher than 36 inches above the floor and 36 inches  
12 in width and must extend the same depth as the rest of the sales or service  
13 counter top. 2010 Standards § 904.4 & 904.4.1.

14 60. Here, no such accessible counter has been provided in violation of the  
15 ADA.

16 61. A public accommodation must maintain in operable working condition  
17 those features of its facilities and equipment that are required to be readily  
18 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

19 62. Here, the failure to ensure that the accessible facilities were available  
20 and ready to be used by the plaintiff is a violation of the law.

21 63. Given its location and options, plaintiff will continue to desire to  
22 patronize the Hotel but he has been and will continue to be discriminated  
23 against due to the lack of accessible facilities and, therefore, seeks injunctive  
24 relief to remove the barriers.  
25  
26  
27  
28

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
 2 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
 3 Code § 51-53.)

4 64. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 5 again herein, the allegations contained in all prior paragraphs of this  
 6 complaint.

7 65. Because the defendants violated the plaintiff's rights under the ADA,  
 8 they also violated the Unruh Civil Rights Act and are liable for damages. (Cal.  
 9 Civ. Code § 51(f), 52(a).)

10 66. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
 11 discomfort or embarrassment for the plaintiff, the defendants are also each  
 12 responsible for statutory damages, i.e., a civil penalty. (Cal. Civ. Code §  
 13 55.56(a)-(c).)

14 67. Although the plaintiff was markedly frustrated by facing discriminatory  
 15 barriers and this frustration possibly qualifies as an emotional distress injury,  
 16 even manifesting itself with minor and fleeting physical symptoms, the  
 17 plaintiff does not value this very modest frustration and physical personal  
 18 injury greater than the amount of the statutory damages.

19  
 20 **PRAYER:**

21 Wherefore, Plaintiff prays that this Court award damages and provide  
 22 relief as follows:

23 1. For injunctive relief, compelling Defendants to comply with the  
 24 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
 25 plaintiff is not invoking section 55 of the California Civil Code and is not  
 26 seeking injunctive relief under the Disabled Persons Act at all.

27 2. Damages under the Unruh Civil Rights Act, which provides for actual  
 28 damages and a statutory minimum of \$4,000.

1           3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

3  
4 Dated: February 22, 2018

CENTER FOR DISABILITY ACCESS

5  
6 By:



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9 Isabel Masanque, Esq.  
10 Attorney for Plaintiff  
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